

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

Richmond Division

MCCAIN-PALIN, 2008, INC.

Plaintiffs,

v.

Case No. 3:08cv709

JEAN CUNNINGHAM, *et al.*,

Defendants.

ANSWER TO COMPLAINT IN INTERVENTION

The defendants, Jean Cunningham, Nancy Rodrigues, and Harold Pyon (the “Defendants”), in their official capacity, by counsel, for their answer to the Intervenor’s Complaint in Intervention, say as follows to the numbered allegations thereof.

1. This is a statement of law that is neither admitted nor denied. If deemed to allege facts, they are denied.

2. Admitted.

3. This is a statement of law that is neither admitted nor denied. If deemed to allege facts, they are denied. Denied that the Court has jurisdiction to preempt the election laws of the Commonwealth of Virginia through the Uniform and Overseas Citizens Absentee Voting Act of 1986 (“UOCAVA”).

4. UOCAVA speaks for itself. Denied that the allegation accurately describes UOCAVA.

5. The duties of the Virginia Board of Elections are set forth by Virginia law, which speaks for itself.

6. Admitted.

7. Upon information and belief, admitted.

8. Denied.

9. Admitted.

10. The Defendants do not know whether this allegation is true or false and therefore deny it. Denied that these determinations or recommendations, if true, have the force of law.

11. Admitted upon information and belief that some UOCAVA voters did not receive absentee ballots from local electoral officials in Virginia at least 30 days before the November 4, 2008 general election. The UOCAVA records speak for themselves.

12. Denied.

13. Denied. UOCAVA does not guarantee such rights.

14. Any allegation not specifically admitted is denied.

15. Denied that the Defendants have wronged the Intervenor or UOCAVA voters in any way.

16. Denied that the Intervenor is entitled to any relief whatsoever against the Defendants or anyone else.

The Defendants say the following as their affirmative defenses:

17. All UOCAVA voters who did not receive State absentee ballots at least 30 days before the 2008 general election had the right to vote using a Federal write-in ballot pursuant to 42 U.S.C. § 1973ff-2. The interests of UOCAVA voters who did not so vote are barred by the doctrines of waiver and/or estoppel.

18. The Complaint in Intervention fails to state a cause of action.

19. The Complaint in Intervention fails to join Virginia's local electoral officials as necessary parties.

WHEREFORE, the Court should dismiss the case, with prejudice, and award the Defendants their attorney's fees and costs, and such other relief as the Court may deem appropriate.

JEAN CUNNINGHAM, *et al.*

By /s/
Counsel

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Certificate of Service

I certify that on November 16, 2008, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to counsel of record.

By: /s/
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